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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

In re the Marriage of OMAIMA ABUREYALEH  
and KHALID ABUREYALEH.

OMAIMA ABUREYALEH,

Appellant,

v.

KHALID ABUREYALEH,

Respondent.

F063399

(Super. Ct. No. 07CEFL02486)

**OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan M. Skiles, Judge.

McCormick, Barstow, Sheppard, Wayte & Carruth, Todd W. Baxter and Scott M. Reddie for Appellant.

No appearance for Respondent.

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In this family law case, appellant Omaima Abureyaleh (Omaima) petitioned the trial court for an order requiring her former husband, respondent Khalid Abureyaleh (Khalid), to pay child support and attorney fees.<sup>1</sup> Earlier in the case, Omaima had also requested spousal support. Khalid, who resided in the country of Jordon, objected to the proposed relief on the ground of lack of personal jurisdiction. The trial court declined to order child support, spousal support or attorney fees, agreeing with Khalid that he did not have sufficient “minimum contacts” with California to support a finding of personal jurisdiction over him. Omaima appeals from that decision. Because uncontroverted evidence showed ample grounds to establish personal jurisdiction over Khalid in California, we reverse and remand the matter to the trial court for further proceedings on the unresolved issues in the case, including child support, spousal support, and attorney fees.<sup>2</sup>

### **FACTS AND PROCEDURAL HISTORY**

Omaima and Khalid were married on August 10, 1985. During their marriage, they had five children together (J.A., M.A., A.A., S.A., and R.A.), all of whom were born in Bakersfield, California. Khalid was the sole wage earner in the marriage while Omaima stayed home and cared for the children. Khalid also maintained control over financial matters during the marriage. During their marriage, Omaima and Khalid purchased their first home in Bakersfield, California in 1989; and in 2001, they purchased a new home together in that city. They also owned numerous rental properties in the Bakersfield area as investments, and Khalid was responsible for managing those properties through a management company and making the required monthly payments

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<sup>1</sup> We use first names as a convenience only; no disrespect is intended. Also, in the interest of privacy, we shall refer to the parties’ children by their initials only.

<sup>2</sup> The unresolved issues would also include division of the marital property, as noted by Omaima in her most recent petition to the court.

on the properties. Khalid was employed in California for many years by Griffith Company, a construction company, and he maintained a pension plan there. His employment with Griffith Company ended in May 2006.

In August 2004, the family moved to the country of Jordan. While living in Jordan, Omaila allegedly began to feel unsettled or unsafe because of how Khalid was treating her there. On January 2, 2007, Omaila left Jordan and returned to California with the three youngest children, A.A., S.A., and R.A. Shortly thereafter, A.A. returned to Jordan to continue with her schooling. The two youngest of the minor children, S.A. and R.A., continued to live with Omaila in Fresno, California.

On April 19, 2007, Omaila filed a petition in Fresno County Superior Court for legal separation. That same day, Omaila also filed an application for an order to show cause (OSC) regarding child custody, visitation, child support, spousal support and attorney fees. Omaila's OSC declaration stated that she was content with J.A., N.A. and A.A. continuing to reside in Jordan, but she asked for a summer visitation plan. Omaila requested sole legal and physical custody of S.A. and R.A., with Khalid having reasonable visitation when he was in California. Omaila estimated Khalid's monthly income to be at least \$11,000 per month plus the income he received from their rental properties, and she requested child and spousal support based on then current guidelines. Omaila also requested that Khalid be ordered to maintain the monthly expenses associated with all their rental properties in Bakersfield as well as other community property debts. Omaila further requested a property restraint order in light of the fact that Khalid previously had withdrawn \$1.5 million from their family trust for business investments in Jordan. Finally, Omaila asked the trial court to award her a sum for attorney fees based on the disparity in the parties' respective incomes. On May 15, 2007, Omaila filed a request for joinder of Khalid's fully vested employee benefit plan in California, referred to as the Griffith Company Employee Stock Ownership Plan, and, in response, Griffith Company filed a notice of appearance in the action.

On August 16, 2007, Khalid filed his response to the OSC. Khalid moved to quash all the proceedings in Fresno County Superior Court on the ground that the country of Jordan had subject matter jurisdiction over custody issues. He informed the trial court that on May 2, 2007, he obtained a default judgment in a Jordanian court regarding the custody of S.A. and R.A. (which default judgment ordered Omailma to return them to Khalid's custody), and that he also filed a divorce proceeding in Jordan. Khalid accused Omailma of having abducted three of their five children when she returned to the United States. Khalid argued as follows: "Fresno County Superior Court has not made any orders in this case, and they should not make orders. As stated above, our child custody and divorce proceedings were previously filed and ordered in the Wadisseir Shari'a Court in the Country of Jordan. As such, the proceedings [in Fresno County Superior Court] should be quashed and jurisdiction should remain in the Country of Jordan." (Boldface omitted.) In his points and authorities, Khalid argued that Jordan should be deemed the "home state" having subject matter jurisdiction of the child custody proceedings in accordance with California law (see Fam. Code, § 3421) under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq.; UCCJEA).

On October 1, 2007, Omailma filed her opposition to Khalid's motion to quash. Omailma's opposition presented her view that the move to Jordan was not intended to be permanent but only "a means of enhancing [their daughters'] understanding of our culture, all the while knowing our home was here in America and we could return here at any time."<sup>3</sup> Omailma emphasized the many ongoing contacts that Khalid still had with California, which she said included "our family residence, mailing address, bank accounts, [Khalid's] Stock/Retirement Plans, rental properties, property manager, [Khalid's] California Contractor's license, and our personal contacts with our family and

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<sup>3</sup> The trial court found Omailma's assertion that the move to Jordan was meant to be temporary was not credible.

friends in California.” Khalid’s California General Contractor’s license was obtained by him in November 2003, and it was valid through November 30, 2007. On October 17, 2007, Khalid filed a declaration from the realtor responsible for listing for sale the properties owned by Omaima and Khalid, which confirmed that at that time Omaima and Khalid still owned nine properties in the Bakersfield area.

On December 14, 2007, a court trial was held on Khalid’s motion to quash and the impact of the Jordanian default judgment on child custody. On February 7, 2008, the trial court’s minute order announced its key holdings that “Jordan is the home state of the children”; *however*, the court “will not enforce Jord[an]ian order, or recognize it.” On May 8, 2008, the trial court issued its written “FINDINGS AND ORDER AFTER TRIAL OF DECEMBER 14, 2007.” The written order stated that the UCCJEA “controls the resolution of this dispute between the State of California and the Country of Jordan.” Applying that law to the facts before it, the trial court held that Jordan was the home state under UCCJEA for purposes of child custody issues. But the trial court also held that the Jordanian default judgment on child custody was unenforceable because Omaima was not given actual notice of those proceedings.

Further effort was made by Khalid to enforce the Jordanian default judgment on child custody by filing a “REGISTRATION OF OUT-OF-STATE CUSTODY ORDER.” However, that effort was rejected by the trial court based (again) on the fact that Omaima did not have actual notice of the proceedings involved.

On November 10, 2008, counsel for Omaima filed a substitution of attorney, leaving Omaima as a self-represented party.

On August 19, 2010, Omaima filed an OSC regarding child custody (as to S.A. and R.A.), child support and attorney fees and costs. Omaima informed the trial court of the following new development in her August 19 OSC papers: “This issue [of custody] was sent to Jordan and on 10-13-09 ... the case [in Jordan] was dismissed for lack of jurisdiction.” The implication being that inasmuch as Jordan had apparently declined to

exercise jurisdiction over the custody issues, California could now do so. (See Fam. Code, § 3421, subd. (a)(2).) Omaima's August 19 OSC filing also stated as follows:

“[Omaima] and children have now been in Fresno County at the same school and participating in school and community affairs and events.

“[Omaima] desires a ruling on full custody and [Omaima] would also need and want a divorce. Khalid ... has been re-married now 2+ years and a final dissolution of marriage and division of property is still necessary here in Fresno County.”

On December 22, 2010, Khalid filed a response as well as a motion to quash the proceedings for lack of service and lack of jurisdiction. Khalid argued that he was not personally served with the August 19, 2010, OSC and that Fresno County Superior Court did not have jurisdiction over the custody of S.A. and R.A. He claimed that Jordan had not declined to exercise jurisdiction as such, but the real issue was apparently one of venue. He also argued there was a lack of personal jurisdiction over him for purposes of the requested orders relating to support and attorney fees.

Pursuant to orders filed on January 5, 2011, the trial court concluded that it once again had subject matter jurisdiction over the custody of S.A. and R.A. The parties were ordered to file updated income and expense declarations before the next hearing, and Khalid's motion to quash was taken off calendar. The trial court entered an order regarding child custody and visitation following a pre-court mediation in which both parties participated. The trial court ordered, in relevant part, that S.A. and R.A. “shall reside primarily with [Omaima], except for specific periods of time” of visitation with Khalid (such as summer break).

The issues of child support and attorney fees were continued to a subsequent hearing date. On February 17, 2011, Khalid filed a responsive declaration to the OSC, stating that he consented to guideline child support but did not consent to the other orders requested (i.e., attorney fees). Both parties filed updated income and expense declarations. On May 6, 2011, Khalid filed supplemental points and authorities and a

declaration opposing any imposition of attorney fees against him, asserting there was no basis for asserting personal jurisdiction over him. On May 9, 2011, the trial court's minute order stated: "Court cannot go forward until [Omama] can provide proof of personal jurisdiction over [Khalid]." The matter was continued to June 13, 2011. Omama's reply declaration, filed on June 7, 2011, attempted to summarize the facts—the minimum contacts—that would allegedly support a finding of personal jurisdiction.

With respect to the issue of personal jurisdiction, Omama's declaration included the following assertions of fact, with supporting evidence: (i) the parties owned numerous rental properties in Bakersfield and Khalid was responsible for managing those properties; (ii) Khalid had used proceeds from the sale of two of the properties to pay his attorney; (iii) \$97,962.86 in tax arrears was owed on property they owned in McFarland; (iv) Khalid collected the USDA agricultural subsidy regarding some of the properties; (v) Khalid continued to maintain a California driver's license with a California address and still kept a vehicle in Jordan that was registered in California; (vi) Khalid continued to hold his pension plan in California with his former employer, Griffith Company, and the balance of that fully vested pension plan was \$849,995.32.

Khalid did not dispute or object to any of the evidence or arguments offered by Omama regarding Khalid's contacts with California. On June 13, 2011, the trial court's minute order stated that the OSC request by Omama regarding child support and attorney fees was being denied because "[the] Court does not have personal jurisdiction on this case. [The] Court can address custody issues. [The] Court is not able to make rulings on financial issues." On July 6, 2011, the trial court's findings and order after hearing explained: "[Omama's] motion for child support, spousal support and attorney's fees is denied based upon lack of personal jurisdiction over [Khalid], who resides in Jordan. [Omama's] responsive pleadings do not support her claim [Khalid] has minimum contacts with this State. Should circumstances change, [Omama] may bring a motion."

Omaima's timely notice of appeal followed.<sup>4</sup>

## **DISCUSSION**

### **I. Standard of Review**

The sole issue on appeal is whether the trial court had personal jurisdiction over Khalid such that it could make orders relating to such issues as child support, spousal support and attorney fees. When a defendant moves to quash based on lack of personal jurisdiction, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*).) If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Ibid.*) "If there is no conflicting evidence, whether the court can exercise personal jurisdiction is a legal question that we review de novo." (*Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 774.) That is, where no conflict in the evidence exists, ""the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record."" ( *Snowney, supra*, at p. 1062, quoting *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons*).)

The only basis asserted by Omaima for California courts to exercise personal jurisdiction over Khalid was the existence of alleged "minimum contacts" on the part of Khalid with the State of California. As noted, Khalid did not dispute or object to any of the minimum contacts evidence presented by Omaima. Since there was no conflicting evidence involved, we independently review the record to determine whether the trial court had personal jurisdiction over Khalid.

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<sup>4</sup> Although Khalid, through counsel, requested a number of extensions of time to file his respondent's brief herein, and such extensions of time were liberally granted by this court, Khalid nevertheless failed to file any brief in this appeal.



## **II. The Trial Court Had Personal Jurisdiction Over Khalid**

### **A. The Minimum Contacts Standard**

California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States. (Code Civ. Proc., § 410.10.) “The exercise of jurisdiction over a nonresident defendant comports with these Constitutions ‘if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate “traditional notions of fair play and substantial justice.”’” (Pavlovich v. Superior Court (2002) 29 Cal.4th 262, 268, citing Vons, supra, 14 Cal.4th at p. 444, quoting Internat. Shoe Co. v. Washington (1945) 326 U.S. 310, 316.) “[T]he minimum contacts test asks ‘whether the “quality and nature” of the defendant's activity is such that it is “reasonable” and “fair” to require him to conduct his defense in that State.’ [Citations.]” (Snowney, supra, 35 Cal.4th at p. 1061.) “The [minimum contacts] test ‘is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite “affiliating circumstances” are present.’ [Citation.]” (Ibid.)

“Although the existence of sufficient ‘minimum contacts’ depends on the facts of each case, the ultimate determination generally rests on some conduct by which the nonresident has purposefully availed himself of the privilege of conducting activities within the forum state to invoke its benefits and protections, and a sufficient relationship or nexus between the nonresident and the forum state such that it is reasonable and fair to require the nonresident to appear locally to conduct a defense. [Citations.]” (Muckle v. Superior Court (2002) 102 Cal.App.4th 218, 227.) “This latter ‘fairness’ finding requires a balancing of the burden or inconvenience to the nonresident against the resident plaintiff’s or petitioner’s interest in obtaining effective relief, and the state’s interest in adjudicating the particular dispute, which ultimately turns on the nature and quality of the nonresident’s forum-related activity. [Citations.]” (Ibid.)

Under the minimum contacts test, personal jurisdiction may be either general or specific. (*Snowney, supra*, 35 Cal.4th at p. 1062.) General personal jurisdiction exists when contacts with the forum state are “‘substantial ... continuous and systematic,’” and in such cases personal jurisdiction exists even as to causes of action unrelated to the nonresident’s activities within the forum state. (*Vons, supra*, 14 Cal.4th at p. 445.) “If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the ‘controversy is related to or ‘arises out of’ a defendant’s contacts with the forum.’ [Citations.]” (*Id.* at p. 446.)

When determining whether specific jurisdiction exists, courts consider the relationship among the defendant, the forum, and the litigation. (*Snowney, supra*, 35 Cal.4th at p. 1062.) “‘A court may exercise specific jurisdiction over a nonresident defendant only if: (1) “the defendant has purposefully availed himself or herself of forum benefits” [citation]; (2) “the ‘controversy is related to or ‘arises out of’ [the] defendant's contacts with the forum’” [citations]; and (3) “‘the assertion of personal jurisdiction would comport with “fair play and substantial justice.’”” [Citations.]’ [Citation.]” (*Ibid.*)

**B. Khalid Had Sufficient Minimum Contacts With California**

Omaima argues, based on the similar case of *Khan v. Superior Court* (1988) 204 Cal.App.3d 1168 (*Khan*), that there were sufficient minimum contacts in the present case to establish personal jurisdiction over Khalid. We agree, as we proceed to explain. Because the facts and analysis in *Khan* are helpful in deciding this matter, we shall discuss that case at some length.

In *Khan*, the parties married and moved to California in 1957. From 1958 to 1961, husband completed a Ph.D. in Pennsylvania in the field of petroleum engineering and then returned to California, where the couple lived continuously until 1967. While living

in California, the couple had two daughters, became United States citizens and purchased a house together in Fullerton, California. (*Khan, supra*, 204 Cal.App.3d at p. 1171.) In 1968, the family moved to Libya after husband accepted a job with Oasis Oil Company (Oasis). They returned to California on several occasions, since Oasis required them to take ““repatriation leave”” every other year to their place of ““permanent residence,”” which the parties identified as California. (*Ibid.*) In 1974, husband was abruptly forced to leave Libya and the entire family returned to California together with all their belongings. While husband looked for work, the couple purchased two parcels of unimproved real property near Palmdale, California. That same year, husband was hired by Arabian American Oil Company (Aramco) and was sent to a job in Saudi Arabia. After moving to Saudi Arabia, other repatriation leave to California was taken by the couple. The family lived in Saudi Arabia until 1987, when the couple separated. At that time, wife permanently returned to California and husband remained in Saudi Arabia. (*Id.* at pp. 1171-1172.)

During their 13-year stay in Saudi Arabia, the couple had further contacts with California. Although their home in Fullerton was sold in 1977, the proceeds were placed in California bank accounts, and the couple continued to own the Palmdale real property. According to a 1987 Aramco record, husband’s permanent place of residence was consistently listed by him as Fullerton, California. At all times, husband maintained his California driver’s license, which he renewed in 1981 and 1985, and each of the California driver’s licenses issued to him stated a California address. (*Khan, supra*, 204 Cal.App.3d at p. 1172.)

After the couple separated in 1987, wife filed a petition in California for legal separation and sought spousal support, attorney fees and a determination of property rights. Husband made a special appearance to contest jurisdiction. He argued there was no basis for finding personal jurisdiction over him since he had not resided in California for 21 years and his only visits were during times of vacation. The trial court found there

were sufficient minimum contacts between husband and California to exercise personal jurisdiction and it proceeded to order spousal support. Husband thereafter filed a petition for a writ of mandate to the Court of Appeal. (*Khan, supra*, 204 Cal.App.3d at p. 1173.)

The Court of Appeal in *Khan* held there were sufficient minimum contacts to establish personal jurisdiction over husband. Not only did the couple marry, have children, secure employment and purchase a home in California, but even after separation there were continuing and substantial contacts between husband and California, including the bank account, real property, current driver's license, and employment records indicating (as confirmed by prior repatriation trips) California was husband's permanent residence. (*Khan, supra*, 204 Cal.App.3d at pp. 1177-1178.) "These matters demonstrate that [husband] intentionally established numerous contacts with California. His diverse links with the state ... [and] deliberate connections and activities qualify as "extensive [and] wide-ranging" [citations] as well as "substantial ... continuous and systematic." [Citations.] [Husband's] ties evidence 'act[s] by which [he] purposefully avail[ed him]self of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.' [Citations.] To this very day, [husband] maintains certain minimal contacts with California." (*Id.* at p. 1178.)

In so holding, the *Khan* opinion focused considerable attention on the matter of the Palmdale property maintained by husband and the husband's bank account in California. The Court of Appeal noted that although the presence of such property alone would not be sufficient to support jurisdiction, it was a significant factor in the minimum contacts analysis because the property was integrally related to the subject matter of the divorce proceedings since it was "among the marital assets [wife] seeks to have divided" and, furthermore, husband's maintenance of such property holdings or investments within California created a reasonable inference under the circumstances that he was availing himself of the benefits and protections of California law. (*Khan, supra*, 204 Cal.App.3d at pp. 1178-1179.) Considering these and the numerous other contacts, it was clear that

California was both the focal point of the marriage and of the economic consequences of its rupture, and thus husband could reasonably have anticipated being haled before a California court. (*Id.* at p. 1179.) The Court of Appeal also pointed out California’s substantial interest “in the orderly resolution of a marital relationship commenced within her borders, particularly as that resolution would entail determining rights to property located in the state. It is likewise highly concerned with protecting the party to the dispute who is a resident. [Citations.]” (*Id.* at p. 1180.) The Court of Appeal in *Khan* concluded there were sufficient minimum contacts to support personal jurisdiction and it denied husband’s petition for writ of mandate, thereby leaving intact the trial court’s order directing him to pay spousal support. (*Ibid.*)

We now turn to the facts of the present case.

After Omaima filed her 2010 OSC requesting an award of child support and attorney fees against Khalid, wherein it was demonstrated that Jordon had declined to exercise jurisdiction, the sole jurisdictional issue in the court below became that of personal jurisdiction over Khalid. The points and authorities prepared by Khalid’s attorney in opposition to the OSC admitted that the parties owned real property in Kern County, California, but argued—*without any evidentiary support*—that all such property was vacant so that no management of the land by Khalid was necessary. Khalid’s declaration in opposition to the OSC was devoid of facts concerning his contacts with California, or the lack thereof, other than his statement that he had been a resident of Jordan since his family moved there in 2004. Ultimately, the OSC hearing date was continued to allow Omaima a further opportunity to present evidence relating to the issue of whether the court could exercise personal jurisdiction over Khalid.

Omaima presented evidence of Khalid’s present and continuing contacts in California. Her declaration and attached exhibits showed that Khalid continued to own rental property with her in the Bakersfield area and that Khalid was responsible for managing such property. She averred: “[Khalid] was and is still the person responsible

for the management of the property. He hires and fires the real estate management firm to look after the property. He is responsible for renting it out, he collects the USDA agricultural subsidy and he is responsible for the property taxes as he manages the funds from the agricultural subsidy and any rental income. [Khalid] is the manager of the family trust of which the property is still owned in California[, as] is his responsibility.” Omaina also asserted in her declaration that one or more properties were sold or foreclosed on after the divorce proceeding and that Khalid used sale proceeds to pay for his own legal fees, and that one of the California properties still owned by the parties is in arrears on property taxes.

There was also evidence presented that Khalid continued to maintain a California driver’s license with a California address and still kept a vehicle in Jordan that was registered in California. Furthermore, the uncontradicted evidence showed that Khalid continued to hold his pension plan in California with or through his former employer, Griffith Company, a California company. Griffith was previously joined as a party to the action and confirmed that the balance in the pension account, in which Khalid was 100 percent vested, was \$849,995.32.

At no time before or during the hearing did Khalid (or Khalid’s attorney) object to or otherwise materially dispute (with opposing evidence) any of the evidence presented by Omaina about Khalid’s contacts with California. At the hearing, the trial court confirmed that it had considered all the minimum contacts asserted by Omaina in her declaration, but the trial court concluded that such contacts were insufficient to establish personal jurisdiction over Khalid. It therefore denied all relief based on lack of personal jurisdiction.

On the record before us, we conclude that the trial court erred. Here, as in *Khan*, Khalid had substantial connections with the State of California by virtue of his property holdings and management activities within this state. The evidence showed that he had continued to manage rental real property in California and that he continued to hold a

pension account/investment within this state, through his former California employer. These facts reflect that he was continuing to purposefully avail himself of the benefits and protections of California law. Moreover, we cannot ignore that such property situated in California was an important and integral subject of the present family law proceedings, both for purposes of ascertaining the parties' financial condition and needs (concerning issues of child support, spousal support or attorney fees) *and* for purposes of a final division of the marital property. Additionally, as in *Khan*, Khalid's own intention to maintain a lasting and significant contact with California was shown by other factors as well, such as the fact that he maintained a California driver's license and kept his vehicle registered in California. On these undisputed facts, we conclude that, at a minimum, specific personal jurisdiction existed since it had been adequately shown that (1) Khalid purposefully availed himself of forum benefits and protection of its laws; (2) the controversy was related to Khalid's contacts with the forum; and (3) the assertion of personal jurisdiction would comport with fair play and substantial justice. (*Snowney, supra*, 35 Cal.4th at p. 1062.)

### **DISPOSITION**

The order of the trial court is reversed. The case is remanded to the trial court for further proceedings on the unresolved issues in this family law case, including child support, spousal support, attorney fees and marital property division. Costs on appeal are awarded to Omaina.

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Kane, J.

WE CONCUR:

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Hill, P.J.

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Wiseman, J.